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ABSTRACT

Competency testing legislation is the result of citizen pressure and lacks the benefit of careful deliberation by professionals. Hastily passed legislation has forced state departments of education and school districts to accept their duty to implement competency testing programs without the appropriate resources. Many of the basic problems of competency testing include test bias, simplicity of test items, lack of in-service or other training resources, and poor communication with parents. In some cases poorly administered testing programs have resulted in racial descrimination and cultural or linguistic bias. To avoid such possibilities, school authorities must develop a process that ensures that all participants understand the program, that tests are carefully developed and piloted, and that appropriate statistical measures are employed to avoid linguistic bias and insure validity and reliability of tests. (JEH)

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COMPETENCY TESTING: ASSESSMENT OR POLITICS?

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Competency Testing: Assessment or Politics?

> It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way -- in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only. Charles Dickens, A Tale of Two Cities

Introduction

In the last decade, considerable discussion has focused on the topic of educational accountability. Erosion of community support for educators, the growing financial burdens on our schools, declining student test scores, and concern for rapidly worsening social problems which the public associates with the schools -- all of these factors contribute in some way to this growing interest in and demand for educational accountability.[1]

Although our schools have already tried a number of approaches to accountability, minimum competency testing is the first approach directly to affect the student as a learner. While the desire to set minimal expectations for students is worthwhile, it is not without its economic, administrative, legal, political, and technical problems.

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[1]Cited from Charles A. Reich, The Greening of America, New York: Random House, 1970, pp. 4-7, in "Accountability on Stage...Again, by David G. Carter, National Association of Secondary School Principals Bulletin, Vol. 58, No. 383, September, 1974, pp. 37-44.

These and other problems have perplexed educators. On one hand, they recognize a legitimate need for students to leave high school able to read and make basic computations. Society, parents, educators and students themselves are no longer willing to tolerate bogus diplomas. On the other hand, the wisdom of implementing proficiency or competency testing programs must be questioned when many of the significant questions related to the testing process remain unanswered. Moreover, the failure of educators to anticipate problems has lead to actual litigation.

Depending on one's perspective, the current interest in competency testing could be viewed as simply another education fad or a long overdue application of common sense. Whatever the view, however, school districts, departments of education, and legislatures have begun to collaborate in the enactment of minimum competency testing legislation.

Rather than discuss the value competency testing has for improving the delivery of educational services, this article will examine the rationale, origins, and impact of this new assessment movement. Furthermore, the writer will provide a thorough analysis of the implications competency testing may have for Black students, in particular. Before the discussion on competency testing, however, a review of its historical development will be presented to put the issue of competency testing into an appropriate perspective.

Competency Testing: Its Origin

The quest for accountability is not recent but is woven into the historic fabric of education. But unlike previous approaches to accountability, competency testing seems to shift the onus for functionally illiterate students from the learners themselves to the educational system.

A more benign view is that instead of placing the responsibility on the educational system, competency testing appears destined to become simply a more sophisticated approach for holding both students and teachers accountable for the overall education effort. William Ryan refers to this phenomenon as "blaming the victim." "Victim blaming," he says, "is cloaked in kindness and concern, and bears all the trappings and statistical furbelows of scientism; it is obscured by a perfumed haze of humanitarianism."[2] The point here is that, at least in some instances, the use of minimum competency tests may one day hold students responsible for their own miseducation.

A number of states have instituted competency testing programs since the pioneering effort of the Oregon State Board of Education in 1972. As a matter of fact, since 1972 a number of states have taken some kind of action with respect to mandating the establishment of elementary and secondary students. In some of these states the responsibility for determining the areas in which minimum competencies must be achieved have been relegated (or deferred) to local school districts.

Politics or Assessment: A Dilemma

The competency testing movement should have come as no surprise to educators, especially when one considers the current fervor over Proposition 13 in California and Amendment 2 1/2 in Massachusetts. Competency testing, like Proposition 13 and Amendment 2 1/2, resulted from citizen pressure rather than the careful deliberations of professionals.

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[2]William Ryan, Blaming the Victim, Vintage, New York, 1971, p. 6.

This pressure has caused legislators to draft competency testing legislation that has not been critically analyzed to determine the negative effect it might have on students and the educational system. Such hasty action has forced some state departments, schools of education, and school districts to accept responsibility for the implementation of competency testing programs without the appropriate resources. In Connecticut, for example, the legislature mandated student remediation but failed to provide the necessary financial support for it. The enactment of state statutes and promulgation of rules and regulations have come to pass with such rapidity that even those committed to the improvement of education often admit that the competency testing movement fails to bring about desired changes and may even prove counter productive.

Although the theory of competency testing movement has been widely applauded, critics continue to argue that assessment should be the major concern of educators and legislators, not political expediency. This criticism usually goes unheeded. Competency testing has become so political that its most basic problems often go unaddressed: test bias, simplicity of test items, the difficulty of inservicing staff, suitable communication with parents and students, and the development of comprehensive plans.

But legislators have an obligation to examine carefully even the most expedient legislation, giving thought to problems that could arise as a result of its enactment. The failure to engage in such otherwise routine planning, may be partially responsible for the discriminatory effect of some competency testing programs seem to exert. For these and other reasons, some citizens have initiated suits against school districts and state departments of education typically citing the negative effects --

the stereotyping and warehousing -- some testing programs produce. Meanwhile, school officials responsible for the implementation of minimum competency testing programs also voice discontent. The lack of professional guidance exhibited from the legislatures on down may well be why educators could do nothing to slow the competency testing movement long enough for some of the pitfalls to be addressed dispassionately. Nevertheless, the responsibility for any competency testing failure is liable to fall to the educators.

The fact that the public and its media often touts minimum competency testing programs as the last chance for educators to correct past mistakes cloaks its supporters with a great degree of diversionary immunity. But, this righteous mantle may be shielding the issue from close scrutiny. In fact, the competency testing programs have become so embroiled in politics that student assessment has, in many instances, become a secondary consideration where legislation is considered.

The full impact of competency testing programs may not be realized for some time to come, but if the dissatisfaction with which it has already been identified is any indication, then the problems in the future should increase. Some believe the minimum competency requirements will cause educators to teach for the test and impede the progress of the more capable students. Others have come to view competency testing programs as another way of involving teachings with more paperwork. Competency testing programs are also viewed as necessary if educators are to become more responsible for their professional decisions.

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[3]Barry Mitzman, "Is Minimum Competency Flunking Its Test?," Learning, November 1978, p. 98.

Finally, some critics cite simple (or seemingly simple) test questions as evidence of "hypocrisy in competency testing."[4] It is safe to say that the overall impact of competency testing has not affected the school districts where it has been implemented uniformly.

Competency Testing: The Law, Politics, and Discrimination

All this dissatisfaction has begun to generate lawsuits, principally because of the harm that undeniably could result from the careless implementation of competency testing programs.

> The [legal] challenges are directed towards specific features of existing minimal competency programs such as fairness of testing procedures vis a vis instruction, the bias toward certain racial, ethnic, and special needs populations, the failure to provide necessary remedial services, the lack of sufficient phase in time, etc.[5]

Thus far, the lawsuits tend to challenge either the constitutionality of competency testing programs or the effectuation of certain administrative practices. The denial of equal protection under the law, violations of Title VII of the 1964 Civil Rights Act, and violations of a student's procedural and substantive rights -- these issues too have formed the basis of competency testing lawsuits. This paper addresses, however, only the extent to which competency tests effect minority students negatively.

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[4] Ibid, p. 100.

[5] Peter W. Airasian, George F. Madaus and Joseph J. Pedulla, Policy Issues in Minimal Competency Testing and A Comparison of Implementation Models, Report Submitted to the Policy Subcommittee of the Massachusetts Advisory Committee on High School Graduation Requirements, April 14, 1978, p. 4.

In fact, a good many questions have already been raised regarding the extent to which competency tests discriminate specifically against minority students, and it has been suggested that such testing programs may sometimes effectively preclude these students from receiving a high school diploma. While "substantial numbers of white, middle-class students cannot meet minimal competency standards,"[6] as Merle McClung notes, testing programs generally have had a disproportionate number of minority students performing below the minimum basic standards.

Other questions revolve around whether the tests are culturally or linguistically biased. The issue of the discriminatory effect competency testing programs may exert has been questioned particularly when test results contribute to the resegregation of students.

In Gaston County, North Carolina v. United States[7] the issue was in fact, directly addressed by the United States Supreme Court when it considered whether literacy tests served to deny the vote to persons of certain races or colors. In this case, Justice Harlan, speaking for the majority of the Court, states that making education available equitably would prepare Black youths to meet the literacy standard when they reached voting age. "Although [Justice Harlan said] the equalization of opportunities for parents is of little value, [we] cannot escape the sad truth that throughout the years, Gaston County systematically deprived its [Black] citizens of the educational opportunities it granted to its white citizens. [Impartial] administration of the literacy test today would serve only to perpetuate these inequities in a different form."[8]

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[6]Merle Steven McClung, "Are Competency Testing Programs Fair? Legal?," Phi Delta Kappan, February, 1978, p. 398.

[7]89 S. Ct. 1720 (1969).

[8]Id.

It was in this case that the Court articulated the "prior effects" principle, which is of particular importance for school officials implementing testing programs in newly desegregated schools.

The "prior effects" principle was expanded upon further in McNeal v. Tate County School District.[9] Citing Singleton[10] and Lemon[11] the U.S. Supreme Court held that tests used to determine ability groups must have been used in a district that had functioned as a unitary system for two or more years. The point here was that a district must have had sufficient time to assure that underachievers were not the result of past educational inequities.

This point assured again in Diana v. California State Board of Education,[12] when Spanish speaking children were placed in a mentally retarded class as a result of their scores on a Stanford-Binet test administered in English. Tested by a bilingual psychologist and permitted to answer in either English or Spanish, the children improved on their test scores by an average of fifteen points. The concerned parties reached agreement, however, thereby avoiding a Court decision. The agreement stipulated that henceforth placement tests of students dominant in a language other than English would utilize the student's dominant language and English.

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[9]508 F. 2d. 1017 (1975).

[10]419 F. 2d. 1400 (1969).

[11]444 F. 2d. 1078 (1969).

[12]Civil No. C-70 RFR (N.D. Cal. January, 1970) Stipulated by agreement of the parties on February 5, 1970.

In Lau v. Nichols[13] the Court prohibited school officials from utilizing culturally or linguistically biased tests. In addition, failure to design a test or testing program that took into consideration the needs of students dominant in a language other than English opened the door, held the Court, for a possible suit.

Another point of interest was raised in Washington v. Davis.[14] Here, the United States Supreme Court noted that the disproportionate impact of a testing program on one racial group "is the sole touchstone of an invidious racial discrimination forbidden by the Constitution."[15] Thus, a test that has a significant impact upon a particular racial or ethnic group, does not, in itself, necessarily violate the Equal Protection clause of the Fourteenth Amendment. To prove its unconstitutionality, a plaintiff must demonstrate that the intent of the testing program was to discriminate racially.

Care should also be paid by educators contemplating the implementation of "ability-grouping" or "tracking." The courts have yet to say that all such "classifications" are unconstitutional, even when a plaintiff has been able to establish a prima facie case, but the danger remains. Establishing a prima facie case requires a plaintiff to prove (as one did in Hobson v. Hansen)[16] that the following incidents related positively to the testing program:

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[13] 94 S. Ct. 786 (1974).

[14] 426 U.S. 229 (1976).

[15] Id.

[16] 269 F. Supp. 401 (D.D.C.), aff'd sub nom. Smuck v. Hobson, 408 F. 2d. 175 (D.C. Cir. 1969).

1. A racial imbalance existed between tracks or ability groups;

2. The standardized ability tests used to classify students were cultural biased against Blacks and other low income students; and

3. A woeful lacking of compensatory or remedial programs had the effect of keeping lower track students on the lower track.[17]

When test results contribute to the resegregation of students, caution must be taken to ensure that the constitutional rights of students are not violated.[18] It was in Florida that this and other issues associated with the discrimination of minority students was first raised. This particular issue will more than likely be alleged in future litigation.

While the number of complaints about the negative effect competency testing programs will have on Black children has increased, few complaints have resulted in litigation. The state of Florida, however, has been the site of at least four such cases: Brady v. Florida State Board of Education,[19] Brady v. Turlington,[20] Blount v. Turlington,[21] and Debra P. v. Turlington.[22] The case of Debra P. successfully raised the issue of the

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[17] Id. at 469-485.

[18] Merle S. McClung, "Competency Testing: Potential for Discrimination," Clearinghouse Review, September, 1977, p. 442.

[19] Case No. 78-653 R. Final Order, State of Florida, Division of Administrative Hearings, Tallahassee, Florida, June 15, 1978.

[20] Case No. 78-1362 R., Petitioner's Memorandum of Law, State of Florida, Division of Administrative Hearings, Tallahassee, Florida, October 13, 1978.

[21] Case No. 78-1363 R., Petitioner's Memorandum of Law, State of Florida, Division of Administrative Hearings, Tallahassee, Florida, October 13, 1978.

[22] 474 F. Supp. 244 (1979).

discriminatory effects of competency tests in newly desegregated schools. There are, of course, concerns about the potential negative effect competency testing programs will have on Black children, few of these concerns have resulted in lawsuits. But, this precise issue did lead to litigation in Debra P. v. Turlington. The case Debra P. v. Turlington was actually a class action suit filed on behalf of all present and future twelfth grade public schools students in the State of Florida who had failed or would fail the State mandated competency examination (the "functional literacy test").

In Debra P.,[23] the representative plaintiff brought suit challenging the constitutionality of the Florida statute that required senior students to pass a functional literacy examination in order to receive their diplomas. Those students with sufficient credits who, nevertheless, failed the examination would receive only a certificate of completion. The plaintiffs contended that the functional literacy examination violated the Fourteenth Amendment due process and equal protection rights, and also violated their rights pursuant to 42 U.S.C. § 2000 d and 20 U.S.C. § 1703. They claimed, moreover, that the examination was racially biased and that the defendants had instituted a program of awarding diplomas without providing adequate notice of the requirements or time to prepare for the examination.

At the time of the trial the functional literacy examination had been administered on three occasions. Of the 41,724 students (36 percent) who failed one or both sections, 78 percent of the students were Black. Seventy-four percent of the Black students taking the exam a second time failed one or both sections, compared to 26 percent of the white students. Forty-six percent of the Black students re-examined on mathematics failed. The same disparity had appeared after the administration of the third examination. Sixty percent of the Black students retaking the mathematics examination

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[23] Id.

for the third time failed as compared to thirty-six percent of the white students. In short, twenty percent of the Black students did not pass the examination as compared to 1.9% of the white students. Or, ten times as many Black students failed the exam as white students.

According to the Court, any action that would inhibit students from benefiting from educational experiences without due process must be avoided. Thus, the Court granted a four-year injunction enjoining the State from requiring students to pass the functional literacy examination as a requirement for receiving a State-sanctioned diploma. The Court meant this moratorium to allow the time necessary to eliminate the taint on the educational development of students that accompanied segregation and to provide them with adequate notice of the test itself.

Recently the Fifth U.S. Circuit Court of Appeals ruled that Florida cannot deny diplomas to students who fail the State's basic skills test until the State proves that the test reflects what is taught in the school. Furthermore, the State must show that the test does not discriminate against minorities because of additional difficulties created as a result of previously segregated schools.

As the Davis[24] Court indicated, the fact that a disproportionate number of Black students failed the examination did not mean, by itself, that the testing program was discriminatory. However, in recognizing the importance of public education to society, the Court relied on Brown:[25]

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

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[24]Washington, supra note 14.

[25]Brown v. Board of Education, 347 U.S. 483 (1954).

The critics notwithstanding, competency testing may actually "help educators and others"[26] to benefit from the best the public schools have to offer. Therefore, educators must do those things that work, rather than accept dictation from parents and legislators.

School authorities must develop a process that ensures that each member of the education profession understands the district's competency testing program. This means that teachers and administrators alike must participate in carefully planned in-service programs that familiarize them with the intricacies of the testing program. Such activities as these can help prepare the education staff to administer the tests and interpret results fairly.

A careful monitoring of the development of the tests to be used in a competency program requires planning, patience, and the complete support of school officials. Cultural and linguistic bias, test validity, and test reliability must be carefully eliminated or isolated and accounted for. One approach to accomplishing this screening is to establish a review committee comprised of experts from school districts, institutions of higher education, the state department of education, private agencies, and other appropriate agencies concerned with the construction of the tests. Some districts and state departments have appointed officers or groups to focus on specific aspects of test development.

Thus, as the law now stands, the impact competency testing will have on a district's students should be evaluated before the program is implemented and the students to be affected by competency testing must receive ample notice of the test. This procedure should minimize any claim that

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[26]Arthur Wise, "Why Minimum Competency Testing Will Not Improve Education," Educational Leadership, May, 1979, p. 551.

the testing program has placed an undue burden on the students before they had an opportunity to prepare for the procedural change.

Parents as well as members of the larger community, ought to be informed, consulted, and involved in the development of a district's competency testing program, and to make this goal a reality, school officials should consider establishing parent and community study groups for the purpose of allowing parents to communicate openly with school officials while limiting the parents' actual involvement to an examination of the district's testing program.

One requirement that receives more lip service than attention is for financial and personnel remediation support to go beyond just the identification of instructional needs. The point here is that educators have an obligation to meet academic need with the delivery of actual educational services. Adopting a competency testing program may help a district meet the needs of students more effectively, but school officials need time to plan and refine student learning programs--an extremely difficult task when the entire school population is involved all at once.

Closely related to this point is that students who do not have an opportunity to benefit from the district's support services should not be penalized by the testing program. In fact, as matters stand now, schools officials often fail to ensure that students who will be affected by the testing program fully understand it.

Conclusion

> Unless the advances of science are used with discrimination by scientists engaged in behavior research--as well as by other professions--the...constructive and productive uses of these advances may be drastically and unnecessarily restricted by a fearful community.[27]

The word I use for the future of competency testing is "hazy." But this much is certain. Until educators develop guidelines that balance the right to fairness and the need for student assessment, society will insist upon at least the appearance of this balance and probably bring it about on its own terms. Thus, the education community should take the lead "through its own codes, its own attitudes, and its own behavior."[28] Otherwise, the legislature and the courts, through statutes and judicial decisions, will go right on establishing guidelines for educators regardless of the appropriateness and applicability of those guidelines.

Technological innovation continually forces educators to prove that their actions do not invade an individual's legislated and common law rights, and this pressure will increase simply because society now finds itself caught in a bind between the responsibility it assigns to professional educators and the rights of students. Accordingly, educators should continue to examine the effects of competency testing on student learning and not succumb to the political pressures to implement inappropriate testing programs.

Any efforts in judgment will, of course, force educators into defensive postures as they attempt to prove that their actions do not violate students' rights. In any case, the pressure will almost certainly increase, simply because the educational community will find itself caught between a "product

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[27]Oscar M. Ruebhausen and Orville G. Brim, "Privacy and Behavioral Research," Columbia Law Review, 65, 1965, p. 1194.

[28]Id.

liability" concept, on one hand, and a growing number of vocal parents dissatisfied with some aspect of an instructional program (or with a particular teacher) on the other. Society's growing taste for malpractice litigation has already swollen the professional liability insurance market. We need some form of student assessment, but we have yet to decide whether minimum competency testing is the answer. Since this question does remain, educators must carefully scrutinize minimum competency testing programs if they are to withstand the inevitable legal challenges to this testing. More concretely, both educators and legislators should be willing to learn from the few available cases as well as from those soon to emerge so that we can minimize injury to our students.

The [program] is really politics masquerading as research. Promise after promise has been broken, and the plans have been dictated...by the legislatures.[29] It is clear, at least to this writer, that competency testing programs have become essentially political programs in the sense that the programs serve groups to whom the persons or agencies charged with developing and implementing the program must report. "Often evaluators believe that they are free of any concerns outside their 'science.' A cursory examination of any [assessment] project will reveal this to be false. [Assessment] affects the allocation of resources. As such it is an intensely political activity, and is affected by politics and in turn affects politics."[30] Simply stated, when people relationships are involved politics is present.

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[29]C. Philip Kearney and Robert J. Huyser, "The Politics of Reporting Results," in Ernest R. House, ed.) School Evaluation: The Politics and Process, McCutchan Publishing Corporation, 1973, p. 47.

[30]Ernest R. House (ed.), School Evaluation: The Politics and Process, "Politics As Usual," McCutchan Publishing Corporation, 1973, p. 43.

This concern for accountability (one manifestation of "the best" of educational times) has brought about the involvement of the state legislature, the media, the schools, professional education organizations, parent and citizen groups, and students, all of whom directly and indirectly attempt to influence competency testing programs (perhaps "the worst" of educational times).

If competency testing programs are to be held hostage by the political process, educators must institute a plan that ensures that everyone in the education community understands what is proposed and has an opportunity to question the legitimacy of such programs.

The real challenge before educators, then, is to develop assessment tools and indicators of what students actually can do in relation to the clearly articulated goals we develop with and for them. It is imperative that such programs do not discriminate against minority students. Programs can be considered "competency based" only when we aim curriculum development, student assessment, instruction, grouping, and promotion toward these goals.[31]

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[31] William Spady, "Competency Based Education: Maximum Confusion, Minimum Implementation," The School Administrator, 36, 7, July-August, 1979, p. 20.